



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 24, 1995

Ms. Alesia L. Sanchez
Legal Assistant
Legal and Compliance, 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR95-081

Dear Ms. Sanchez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27731.

The Texas Department of Insurance (the "department") received a request for information concerning Food Industry Insurance Exchange. You say some of the information will be disclosed, but seek to withhold from required public disclosure portions of the requested information based on sections 552.103, 552.107(1), and 552.112 of the Government Code.¹

Section 552.103(a) applies to information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

¹Although you raised section 552.111 in your letter requesting an open records decision, you did not mark any of the documents you submitted to this office as within that exception. Consequently, we cannot consider the application of section 552.111 to any of the requested information.

(2) that the attorney general or the attorney of the political subdivision has determine should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). You state that the department anticipates that the investigation of Food Industry Insurance Exchange will culminate in an administrative contested case. You also state that the attorney responsible for reviewing this matter has determined that the requested information is directly related to the anticipated litigation. We believe that litigation is reasonably anticipated in this case and that the information you marked as within section 552.103 relates to that anticipated litigation. Consequently, we conclude that the department may withhold from required public disclosure the information you marked as within this exception.

You assert that section 552.107(1) applies to portions of the requested information. This exception states that information is excepted from required public disclosure if

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas.

Although section 552.107(1) appears to except information within rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct, the rule cannot be applied as broadly as written to information that is requested under the Open Records Act. Open Records Decision No. 574 (1990) at 5. To prevent governmental bodies from circumventing the Open Records Act by transferring information to their attorneys, section 552.107(1) is limited to material within the attorney-client privilege for confidential communications; "unprivileged information" as defined by rule 1.05 is not excepted under section 552.107(1). *Id.* at 5; Open Records Decision No. 462 (1987) at 13-14.

Thus, this exception protects only the essence of the confidential relationship between attorney and client from the disclosure requirements of the Open Records Act. Open Records Decision No. 574 at 5. That section 552.107(1) protects only the essence of the confidential attorney-client relationship means that the exception applies only to information that reveals attorney advice and opinion or client confidences. *See* Open Records Decision No. 574. We note that you do not assert that any of the documents contain client confidences. We have marked the portions of the requested information that the department may withhold pursuant to section 552.107(1).

Finally, you raise section 552.112, which excepts from required public disclosure

information contained in or relating to examination, operating, or condition reports prepared by or for an agency responsible for the regulation or supervision of financial institutions or securities, or both.

Insurance companies are included within the term "financial institutions" for purposes of section 552.112(a). Open Records Decision No. 158 (1977) at 5-6. Portions of the requested information contain information about the financial condition of Food Industry Insurance Exchange. The department may withhold this information from required public disclosure under section 552.112(a).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/rho

Ref.: ID# 27731

Enclosures: Marked documents

cc: Mr. Andrew E. James
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(w/o enclosures)